*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 29430 OF 2005

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% 17.03.2006

The Management of M/s Nucon Industries Pvt Ltd, Balanagar, Hyderabd rep,by its Managing Director, Nucon Industries P. Ltd.

….. Petitioner

Vs.

1. $ Industrial Tribunal – I, Hyderabd rep., by its Presiding Officer and another.

….Respondents.

! Counsel for the Petitioner: Sri A.K. Jayaprakash Rao

^ Counsel for the Respondents: G.P. for Labour

< Gist:

>Head Note

? Citations:

AIR 1978 SC 1004

[2] (1990)2 SCC 314

[3] 1972(1) LLJ 172

[4] 1972(1) LLJ 180

[5] 1999(3) LLN 371

[6] 2001 Suppl.(3) LLJ 1329

[7] 2006(1) LLJ 314

[8] AIR 1958 SC 79

[9] AIR 1969 SC 983

10 2002(2) SCC 244

11AIR 1976 SC 98

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.M.P.NO.33832 OF 2005

AND

WRIT PETITION NO. 29430 OF 1995

ORDER:

The petition in W.P.M.P.No. 33832 of 2005 is filed to review the order passed in W.P.No. 29430 of 1995 dated 04.11.2004 wherein this Court, on being informed that similar orders passed by the Tribunal under Section 33-2(b) of the Industrial Disputes Act had been challenged before this Court and during the course of hearing the matters were settled for amounts below Rs.50,000/- and

that the management was prepared to pay Rs.50,000/- in full and final settlement of the claims of the respondent workman, disposed of the writ petition directing the petitioner-management to pay Rs.50,000/- to each of the workman in full and final settlement of their dues and held that they were not entitled to any other claims including gratuity and other terminal benefits. This Court directed that the said amount be paid to the workman within one month from the date of receipt of a copy of the order.

2. It is this order which is sought to be reviewed by the respondent-workman on the ground that the settlement proposals putforth by the management had not been accepted by him and that some of the other workmen were directed by this Court to be reinstated into service. Reference is made to the order of this Court in W.P.No. 18993 of 1995 dated 04.11.2004, in this regard.

3. It is no doubt true that the scope of enquiry, in a petition seeking review of an order, is limited and there cannot be a re-hearing of the writ petition on merits. The fact, however, remains that as neither the workman nor his counsel was present in Court, the order under review was passed based only on the submissions made on behalf of the Management. While failure on the part of the Counsel to be present in Court, when the writ petition was heard and disposed of, is not by itself a ground for review, considering the fact that the services of the workman had been terminated and the order of this Court was not on merits but on the basis of the submission that in similar cases the matter had been settled on payment of Rs. 50,000/- as compensation to each workman and since it is now brought to the notice of this Court that in W.P.No. 18993 of 1995 dated 04.11.2004, (the very date on which the order under review was passed), this Court had directed reinstatement of the workman which fact was not brought to the notice of this Court by the management, I consider it appropriate to review the order and to decide the writ petition on merits, more so as the respondent workman had not received the sum of Rs.50,000/- offered by the petitioner.

4. The writ petition was filed by the employer questioning the order of the Industrial Tribunal-I, Hyderabad dismissing the application, filed by them under Section 33(2)(b) of the Industrial Disputes Act, seeking approval of its action in dismissing the workman from service. Sri A.K. Jayaprakash Rao, learned Counsel for the petitioner, made elaborate submissions and contended that the

order of the Tribunal, in rejecting the petitioner's request and in dismissing the petition seeking its approval, was required to be quashed.

5. The respondent-workman, working as a turner in the petitioner company, was charged, under Standing Order No. 20(X), (XIV) and (XXXV), for dereliction of duties and slowing down of work, vide memo dated 02.04.1993. An Enquiry Officer was appointed and on a report being submitted by him holding the respondent-workmen guilty of the charges, the disciplinary authority concurred with the findings of the enquiry officer and issued second show cause notice dated 12.08.1993. On receipt of the workman's explanation thereto on 29.08.1993, the disciplinary authority came to the conclusion that the charges levelled against the workman had been proved and on holding that the misconduct was grave in nature, the workman was dismissed from service with effect from 20.10.1993. One month's wages was tendered to the workman along with the dismissal order and, since proceedings in I.D.No. 56 of 1990 was pending before the Tribunal, an application was filed under Section 33-2(b) of the Industrial Disputes Act seeking approval of the action taken by the management in dismissing the workman from service.

6. In the counter filed by him, before the Tribunal, the workman contended that termination of his services was in violation of the provisions of the Industrial Disputes Act, contrary to the Standing Orders of the Company and in violation of principles of natural justice. The workman contended that disciplinary proceedings were instituted on a false charge, without even a charge-sheet being issued as required under Clause 22(b) of the Company's Standing Orders, and with a pre-determined mind to terminate his services. The respondent-workman denied that he had received the pay order along with the order of dismissal. He also contended that the punishment imposed on him was shockingly disproportionate to the gravity and seriousness of the misconduct and that the action of the petitioner-Management in dismissing him from service was liable to be set aside.

7. Oral evidence was adduced by both parties and while Exs.P1 to P11 were marked with consent on behalf of the petitioner-management, no documents were marked as exhibits on behalf of the respondent-workman. The Tribunal by order dated 30.09.1994 upheld the validity of the domestic enquiry conducted

by the petitioner-Employer. However, by order dated 11.10.1994, the Tribunal, dismissed the petition, recording its findings as under:

"As per the records available on the file of this Tribunal, no charge sheet was issued as required under Clause 22(b) of the "Certified Standing Orders" of the Company. It is seen that the petitioner-management had initiated disciplinary proceedings against the respondent-workman who submitted his explanation on 16.05.1993. It is further seen that the petitioner had initiated the disciplinary proceedings against the respondent workman on a false charge without issuing any charge sheet as required under Clause 22(b) of the company's Standing Orders, with a pre-determined mind to terminate the services of the respondent-workman. Further it is seen that the respondent workman has not received the dismissal order along with the pay order, this itself is against the principles of natural justice. Moreover the petitioner-management has not filed the documents which were filed before the Enquiry Officer. The charge against the respondent-workman was that slow down of work which constituted acts of misconduct under Company's Standing Orders 20(X)(XIV) and (XXXV) "Habitual Negligence or Neglect of Duties/Work"…. Indulging in acts of subversive of discipline or efficiency "Mallingering or slow down of work or instigation thereof". Here in this case there was no indulging of acts subversive of discipline. The respondent-workman was charged due to his active participation in the Union and to weaken the Union. Of course the acts committed by the respondent is shockingly disproportionate to the acts committed by the respondent and the dismissal from service is invalid and illegal. Only to wreck vengeance, the petitioner issued the dismissal order. Hence on a consideration of the entire material available on record, I am of the clear opinion that the petition is liable to be set aside and the respondent-workman is entitled to be reinstated into service……"

8. Sri A.K. Jayaprakash Rao, learned Counsel for the petitioner, would submit that the jurisdiction of the Tribunal, under Section 33-2(b) of the Act, is extremely limited and that, unlike in cases where a dispute has been referred under Section 10 or where an application is filed under Section 2-A(2), the Tribunal, while exercising its jurisdiction under Section 33-2(b) of the Industrial Disputes Act, is not entitled to invoke its powers under Section 11-A of the Act. Learned Counsel would submit that even if approval is accorded by the Tribunal, under Section 33(2)(b), it is always open to the workman to question his order of termination either by raising a dispute and seeking a reference under Section 10 or by directly filing an application under Section 2-A(2) of the Industrial Disputes Act. Learned Counsel would contend that the Tribunal, in proceedings under Section 33-2(b) of the Act, is not entitled to re-appreciate the evidence on record or to sit in appeal over the quantum of punishment imposed by the employer on the workman, and that since a prima-facie case has been made out, the services of the workman had not been terminated by way of victimization and one month's notice pay was given along with the order

of punishment, the Tribunal was bound to accord approval. Learned Counsel would submit that since the Tribunal, in the present case, had upheld the validity of the domestic enquiry, it must necessarily lead to the conclusion that the enquiry was held in accordance with principles of natural justice and since it is not disputed before this Court by the respondent workman that one month's wages were paid along with the order of dismissal, the Tribunal had erred in rejecting the petitioner's application. Learned Counsel would submit that the order of the Tribunal in this regard is liable to be set aside, and the application filed by the petitioner-management allowed. Learned Counsel would place reliance on (1) **Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd**; (2) **Bharat Electronics Limited Vs. Industrial Tribunal, Karnataka, Bangalore**; (3) **Delhi Cloth and General Mills Co.Ltd Vs. Ganesh Dutt**; (4) **Delhi Cloth and General Mills Co.Ltd Vs. Ludh Budh Singh**; (5) **Rajendra Prasad Vs. Chairman, Bihar State Road Transport Corporation**; (6) **Management, Pallavan Transport Corporation Vs. P.O., Industrial Tribunal** (7) **Delhi Transport Corporation, New Delhi Vs. Bal Kishan** and (8) **Martin Burn Ltd. Vs. R.N. Banerjee.**

9. Sri C. Damodar Reddy, learned Counsel for the respondent-workman, would seek to sustain the order of the Tribunal and contend that the punishment imposed on the respondent-workman is an act of victimization, since the workman concerned was an office bearer and an active member of the union. Learned Counsel would submit that with a view to curtail their bargaining power and to weaken the union, disciplinary action was taken and punishment of dismissal from service was imposed on them by the petitioner herein. Learned Counsel would contend that the findings of the enquiry officer, holding the workman guilty of the charges, were perverse and that, in any event, the punishment imposed on the workman is shockingly disproportionate. Learned Counsel would submit that the Tribunal, even after the validity of the domestic enquiry is upheld, is entitled to examine as to whether the findings of the enquiry officer are perverse and whether the punishment imposed on the workman amounts either to victimization or is shockingly disproportionate to the misconduct held proved.

10. Learned Counsel would contend that inasmuch as the Tribunal had specifically held that:-

(1). No charge-sheet, as required under Section 22-b of the Company's Standing Orders, was issued;

(2). The Petitioner-management had not filed the documents, which was filed before the Enquiry Officer, before the Tribunal;

(3). Slowing down of work did not amount to indulging in acts subversive of discipline;

(4). the respondent-workman was charged due to his active participation and to weaken the union;

(5) the punishment imposed is shockingly disproportionate; and

(6) the punishment imposed is only to wreak vengeance on the workmen;

and these conclusions are based on the evidence on record, the Tribunal was well within its powers, under Section 33-2(b) of the Act, to refuse to grant approval. Learned Counsel places reliance on **Central Bank of India Ltd., Vs. Prakash Chand Jain** and **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma** in this regard.

11. Section 33 of the Industrial Disputes Act, reads thus:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings:- (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

a. in regard to any matter connected with the dispute, alter, to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

b). for any misconduct connected with the dispute, discharge or punish, whether any dismissal or otherwise, any workman concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

2. During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, (or where there are no such standing orders in accordance with the terms of the contract, whether express or implied, between him and the workman),

a. alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

b. for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

12. It is clear therefrom that during the pendency of any proceedings, in respect of an Industrial dispute, an employer can dismiss a workman for misconduct not connected with the pending dispute, provided such a workman had been paid wages for one month and an application has been made to the authority before whom the proceedings are pending for approval of the action taken by the employer.

13. The scope of enquiry, in proceedings under Section 33-2(b) of the Act, has been examined by the Supreme Court in several cases.

14. In **Lalla Ram**[1], the Supreme Court held:-

"The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(*b*) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (*i*) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (*ii*) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (*iii*) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in *Bengal Bhatdee Coal Co.* v. *Ram Prabesh Singh: AIR 1964 SC 486 T*itaghur Paper Mills Co. Ltd Vs. *Ram Naresh Kuma (1961) 1 Lab LJ 511*, *Hind Construction & Engineering Co. Ltd.* v. *Their Workmen AIR 1965 SC 917, Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd.* v. *Management AIR 1973 SC 1227* and *Eastern Electric & Trading Co.* v. *Baldev Lal AIR 1975 SC 1892* that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (*iv*) whether the employer has paid or offered to pay wages for one month to the employee and (*v*) whether the employer has simultaneously or within such reasonably short time as to form part of the

same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

Let us now see whether the aforesaid requirements are satisfied in the present case or not. As stated earlier, the Enquiry Officers had, after a regular enquiry properly made according to the requirements of the Standing Orders and principles of natural justice, come to a categoric and bona fide conclusion that the appellant obstructed Shyam Singh in the execution of his legitimate official duties (of protecting the immovable property of the Company and preventing its improper and unauthorised use) by abusing, threatening and roughly handling him and thereby committed misconduct as contemplated by Standing Order 27(*i*). The Industrial Tribunal had itself also clearly found that the Enquiry Officers were not biased against the appellant that the domestic enquiry held against the appellant was not violative of the principles of natural justice and that it could not be said that the findings of Enquiry Officers were not based upon evidence or were perverse. The material on record also disclosed that the employer paid one month's wages to the appellant and simultaneously made an application to the specified authority before which the main industrial dispute was pending for grant of approval of the dismissal of the appellant. Further the misconduct for which the disciplinary action was taken against the appellant was undoubtedly directed against Shyam Singh to prevent him from investigating into a matter relating to immovable property belonging to the Company which he was bound to protect in discharge of the duties which devolved upon him as a security officer. In face of all the aforesaid factors which make out a strong prima facie case against the appellant, it is difficult to understand how the Additional Industrial Tribunal could legitimately ignore the bona fide findings of the Enquiry Officers which it had itself endorsed by holding that there was no rational nexus between the appellant's misconduct and his employment and that of Shyam Singh and withhold its approval of the action taken by the management of Respondent 1. On a careful consideration of the entire facts and circumstances of the case, we are therefore clearly of the view that the requisite nexus was there and the Industrial Tribunal unauthorisedly assumed the role of an Appellate Authority and exceeded the well-defined limits of its jurisdiction in refusing to accord its approval of the action taken against the appellant by holding not on the basis of any legal evidence but purely on the basis of conjectures and surmises that the present was a case of victimisation. We would like to call attention at this stage to the decisions of this Court in *Tata Engineering & Locomotive Co. Ltd.* v . *S.C. Prasad (1969) 2 Lab LJ 799 (SC)* and *Hamdard Dawakhana Wakf* v. *Its Workmen (1962) 2 Lab LJ 772 (SC)* and reiterate and re-emphasise that no question of victimisation or management having a bias against the appellant can arise once it is held that the findings of misconduct alleged against the workman were properly arrived at and the domestic enquiry was in no way vitiated……"

15. In **Ganesh Dutt**[3] the Supreme Court held thus:

".....The nature of the jurisdiction exercised by an Industrial Tribunal in such circumstances is a very limited one and it has been laid down by several decisions of this Court. The legal position is that where a proper enquiry has been held by the management, the Tribunal has to accept the finding arrived at in that enquiry unless it is perverse or unreasonable and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide (vide *Punjab National Bank, Ltd.* v. *Workmen(1960 1 SCR 806*, *Bharat Sugar Mills Ltd.* v. *Jai Singh 1961-II LLJ 644*, *Ritz Theatre* (*P*) *Ltd.* v. *Its Workmen 1962-II LLJ 498*, and *Mysore Steel Works* v. *Jitendra Chandra Kar 1971 –1 LLJ 543*)."

16. Similarly in **Ludh Budh Singh**[4] the Supreme Court held thus:

"....The counsel further contended that the jurisdiction of the Tribunal, as laid down by this Court in several decisions, was only to satisfy itself whether a prima facie case has been made out by the employer and that the employer has not acted mala fide and that the enquiry has been held in accordance with the principles of natural justice and the procedure indicated in the Standing Orders, if any. If once the Tribunal comes to the conclusion that the management has not acted mala fide and that there has been a proper enquiry and that the conclusion arrived at by the Enquiry Officer is a possible one on the evidence led before it, the Tribunal cannot substitute its own judgment for the judgment of the Enquiry Officer, though it may have come to a different conclusion on the evidence adduced before the Enquiry Officer.

We do agree, as abstract propositions of law, the contentions of the learned counsel regarding the scope of a Tribunal's jurisdiction, in such matters, are correct. But the question for consideration by us is whether the Industrial Tribunal, when it declined to grant the permission asked for by the appellant, has in any manner acted contrary to the principles referred to by Mr Anand and set out above.

The Industrial Tribunal had to consider whether the appellant has made out a prima face case for permission being granted for the action proposed to be taken against the workman. For that purpose the Tribunal was justified in considering the nature of the allegations made against the workman, the findings recorded by the Enquiry Officer and the materials that were available before the Enquiry Officer, on the basis of which such findings had been recorded. Accepting the contention of Mr Anand that it was within the jurisdiction of the Enquiry Officer to accept the evidence of Sujan Singh and Rampal will be over-simplifying the matter and denying the legitimate jurisdiction of the Tribunal in such matters to consider whether the findings are such as no reasonable person could have arrived at on the basis of the materials before the Enquiry Officer. If the materials before the Enquiry Officer are such, from which the conclusion arrived at by the Enquiry Officer could not have been arrived at by a reasonable person, then it is needless to state as laid down by this Court in *Central Bank of India Ltd., New Delhi* v. *Prakash Chand Jain* that the finding has to be

characterised as perverse. If so the Industrial Tribunal had ample jurisdiction to interfere with such a finding.

".....When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct."

17. In **Management, Pallavan Transport Corporation**[6], the Madras High Court held that the Tribunal, while exercising its jurisdiction under Section 33-2(b) of the Act, cannot re-appreciate the evidence, adduced in the domestic enquiry, as if it were exercising its jurisdiction under Section 11-A of the Act.

18. In **Martin Burn Ltd**[8] the Supreme Court held thus:

"The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See *Buckingham & Carnatic Co., Ltd Vs. The Workers of the*

Company, (1952) Lab. AC 490 (F).

19. In **Prakash Chand Jain**[9], the Supreme Court held thus:-

"These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal under Section 33(2)(b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all……"

20. In **Ram Gopal Sharma**[10], the Supreme Court held thus:

"…….The proviso to Section 33(2)(*b*) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(*b*) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

Where an application is made under Section 33(2)(*b*) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide, whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(*b*) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. ….."

21. The jurisdiction of the Industrial Tribunal and the scope of enquiry, in proceedings under Section 33(2)(b) of the Industrial Disputes Act, as analysed in the above referred judgments of the Supreme Court can be summarized as under:

1. The jurisdiction of the Industrial Tribunal is confined to an enquiry as to :-

   a). whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

   b). whether a prima-facie case for dismissal, based on legal evidence adduced before the domestic tribunal, is made out;

   c). whether the employer had arrived at a bona fide conclusion that the employee was guilty; and

   d) whether the order of dismissal did not amount to unfair labour practice and was not intended to victimize the employee.

2. The Tribunal has to consider whether the employer has made out a prima facie case for permission being granted for the action proposed to be taken against the workman.

3. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence led in support of the same were believed. The relevant considerations in this regard are whether, on the evidence, it is possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. While the Tribunal, in considering this question, may possibly have arrived at a different conclusion, it cannot substitute its own judgment for the judgment in question. It has only to consider whether the view taken is a possible view on the evidence on record.

4. In this context the Tribunal can consider the nature of the allegations made against the workman, the findings recorded by the Enquiry Officer and the material that was available before the Enquiry Officer on the basis of which such findings had been recorded. The Tribunal is entitled to consider whether the findings of the Enquiry Officer are such as no reasonable person could have arrived at on the basis of the material on record in the enquiry.

5. As long as the conclusions arrived at by the enquiry officer is a possible one on the evidence lead before him, the Tribunal cannot substitute its own judgment for the judgment of the enquiry officer, though it may have come to a different conclusion on the evidence adduced before the enquiry officer.

6. Where a proper enquiry has been held by the management, the Tribunal has to accept the findings arrived at in that enquiry unless it is perverse or is based on no evidence.

7. If the material before the Enquiry Officer are such, from which the conclusion arrived at

by the Enquiry Officer could not have been arrived at by a reasonable person, the finding must be characterized as perverse.

8. Once it is held that the findings, on the misconduct alleged against the workman, were properly arrived at and the domestic enquiry is held not to be vitiated, no question of victimization or the management being biased against the workman can arise.

9. The Tribunal, in exercise of its jurisdiction under Section 33(2)(b), unlike under Section 11-A of the Industrial Disputes Act, is not entitled to re-appreciate the evidence adduced in the domestic enquiry. It is only if the findings of the Enquiry Officer are perverse can they be disregarded. The test of perversity is that the findings are not supported by any legal evidence.

10. It is open for the management to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue is against the management.

11. If the finding on the preliminary issue, regarding validity of the domestic enquiry, is in favour of the management, then no additional evidence can be cited by the management. If the finding on the preliminary issue is against the management, the Tribunal must give the employer an opportunity to cite additional evidence and give a similar opportunity to the employee to lead evidence contra.

12. When the preliminary issue is decided against the management, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper.

13. While the quantum of punishment to be awarded is for the management to decide and not for the Tribunal to consider the propriety or adequacy of the punishment or whether it is excessive or too severe, inference of mala fides may be drawn in certain cases from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment.

14. The Tribunal should grant permission unless it has reason to believe that the management is guilty of victimization or has been guilty of unfair labour practice or has acted mala fide.

15. The Tribunal must ascertain whether the employer has paid or offered to pay wages, for one month, to the employee.

16. The Tribunal must ascertain whether the employer has simultaneously, or within such reasonable short time as to form part of the same transaction, applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

17. The employer cannot be permitted to use the provisions of Sections 33(2)(b) to ease out the workman, without complying with the conditions stipulated in the said provision, for any alleged misconduct unconnected with the pending industrial dispute.

18. Once permission is accorded by the Tribunal, it relates back to the original order of punishment.

19. If the Tribunal refuses to grant approval the employee continuous to be in service as if the order of punishment had never been passed.

20. If approval is given by the Tribunal and if the employee is aggrieved thereby, he is entitled to make a complaint under Section 33-A, challenging the order granting approval, on any of the grounds available to him.

22. Now to the facts of the case on hand. The Tribunal held that disciplinary proceedings were initiated on a false charge, without issuing any charge sheet, with a pre-determination to terminate the services of the workman, that the respondent-workman had not received the dismissal order along with pay order, which was against principles of natural justice, that the petitioner management had not filed the documents which were filed before the Enquiry Officer, that slowing down of work would not amount to acts subversive of discipline, that the workman was chargesheeted due to his active participation in the union and to weaken the union, that the punishment imposed was grossly disproportionate to the acts of misconduct and that the dismissal order was issued only to wreak vengeance on the workman.

23. The Tribunal was in error in holding that the workman had not received the dismissal order along with the pay order, as the record discloses that while the pay order was issued on 17.5.1993, the workman's full and final settlement was calculated upto 18.5.1993. The finding that the petitioner-management had not filed the documents which it had filed before the enquiry officer is also erroneous as the Appendix, to the order of the Tribunal, would clearly reveal that the following documents were marked by the petitioner-management:

"Ex.P1/16-7-92 Show cause notice cum suspension order to Sri G.Hanumantha Rao

Ex.P2/25-7-92 Explanation to the Ex.P1

Ex.P3/22-12-92 Notice of enquiry

Ex.P4/30-12-92 -do-

Ex.P5 Enquiry proceedings

Ex.P6 Enquiry report

Ex.P7/16-3-93 Final show cause notice issued to Mr.G.Hanumantha Rao

Ex.P8/4/4/93 Explanation to the final show cause notice of Sri G.Hanumantha Rao T.No.134.

Ex.P9/13-5-93 Dismissal order issued to Sri G.Hanumantha Rao

Ex.P10/13-5-93 Full and final settlement by Mr.G.Hanumantha Rao (Turner) as on 18-5-93

Ex.P.11/17-5-93 Xerox copy of the Pay Order issued to G.Hanumantha Rao for Rs.4130.23

Ex.P12 Postal receipt of Regd. Post sent to Sri G.Hanumantha Rao."

24. Under the show cause notice-cum-suspension order dated16.7.1992, the respondent-workman was informed of the allegations made against him and that the allegations constitute misconduct under the Company's Standing Order 20(x), (xiv) and (xxxv) and that he was charged with misconduct for the alleged acts. Whatever may be nomenclature, it is clear that the said proceedings dated 16.7.1992, whereby the petitioner was informed of the allegations made against him and that these allegations constituted misconduct under the Company's Standing Orders, is undoubtedly a charge sheet. As such the finding that no charge sheet was issued to the workman is also based on no evidence and is liable to be set aside. It is also difficult to accept the conclusion of the Tribunal that slowing down of work does not amount to acts subversive of discipline. Deliberate slowing of work, with the intention to adversely affecting the normal functioning of the establishment, would undoubtedly constitute acts subversive of discipline.

25. While the conclusions of the Tribunal that the workman was charge sheeted only because of his active participation in the union and to weaken the union would amount to victimization, justifying the Tribunal's refusal to accord permission, it cannot be lost sight of that victimization is a serious charge by an employee against the employer and must therefore be properly and adequately pleaded giving all particulars upon which the charge is based. The

fact that the employee is a member or active office bearer thereof is, per se, no crucial instance. (**M/s Bharat Iron Works v. Bhagubhai Balubhai Patel**). The Tribunal, in support of its findings that the workman was victimized for his active participation in the union and to weaken the union, has failed to assign reasons. Even in support of its conclusion that the punishment imposed is grossly disproportionate, the Tribunal has chosen not to assign reasons. In the absence of reasons being assigned by the Tribunal, this Court is called upon to examine the evidence on record and determine whether such conclusions are justified. The certiorari jurisdiction of this Court, under Article 226 of the Constitution of India, is supervisory and not appellate. This Court would not substitute its views for that of the Tribunal or arrive at independent conclusions on the material evidence on record. If the Tribunal has failed to discharge its functions under the Act, this Court would direct it to do so and not take upon itself the task of discharging the functions of the Tribunal. It is for the Tribunal, on the evidence on record, to determine as to whether or not permission is to be accorded and not for this Court to go into the merits of these issues, in proceedings under Article 226 of the Constitution of India. The order of the Tribunal, in M.P. 8 of 1993 in I.D. No. 56 of 1990 dated 11.10.1994, is set aside.

26. M.P.No. 8 of 1993 in I.D.No. 56 of 1990, is remanded to the Industrial Tribunal – I, Hyderabad for disposal on merits. Since more than 12 years have elapsed since M.P.No.8 of 1993 was filed, it is just and necessary that the Tribunal decides the application as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order.

27. The writ petition is accordingly disposed of. However, in the circumstances, without costs.

Date: 17.03.2006 _____

RAMESH RANGANATHAN, J

Note: L.R.Copy to be marked

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